

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

WAI YIP INTERNATIONAL CORP.,

Plaintiff,

vs.

Civil Action No. 06-3674 (KSH)

JAAM, LLC,

Defendant.

ORDER

KATHARINE S. HAYDEN, U.S.D.J.

This matter having come before the Court upon the Report and Recommendation of Magistrate Judge Patty Shwartz, filed on October 18, 2006, concluding that plaintiff improperly removed its complaint to federal court and recommending that the complaint either be remanded to the Superior Court of New Jersey or be dismissed; and this Court receiving no objection thereto; and this Court having reviewed the issues therein;

And the Court noting from plaintiff's notice of removal (docket entry #1, at ¶¶ 5-7) that Judge McVeigh of the Superior Court of New Jersey dismissed plaintiff's complaint and directed plaintiff to remove the case to federal court, reasoning that the complaint alleged violations of federal patent and copyright laws and federal courts have exclusive jurisdiction over such claims, 28 U.S.C. § 1338(a);

And the Court noting that "a removed case may not be adjudicated in federal court if the state court did not have subject matter jurisdiction over the suit when it was initially filed there," even if

the suit could have originally been filed in federal court, Bradshaw v. General Motors Corp., 805 F.2d 110, 112 (3d Cir. 1986) (citing Lambert Run Coal Co. v. Baltimore & Ohio R.R. Co., 258 U.S. 377, 382 (1922));

And the Court being mindful of Third Circuit precedent requiring *dismissal*, as opposed to remand, of such cases because the state court lacks subject matter jurisdiction over the claim, Bradshaw, 805 F.2d at 112;

And finally, the Court noting that plaintiff has filed a new complaint with this Court, see Case No. 06-cv-5032, which asserts the same violations of federal patent and copyright law by defendant as the present case;

IT IS on this 11th day of December, 2006

ORDERED that the Report and Recommendation of Magistrate Judge Shwartz is adopted and incorporated as the Opinion of this Court; and it is further

ORDERED that plaintiff's complaint is dismissed.

/s/ Katharine S. Hayden
Katharine S. Hayden, U.S.D.J.